IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7888 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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LOHIYA SAVITABEN WD/O BHARPURSINGH - Petitioner(s)

Versus

CHAUHAN BHUPATSINH BADARSINH - Respondent(s)

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Appearance :

MS KRUTI J VORA for Petitioner(s) : 1,
MR KARTIK I SONI for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 20/09/2005

ORAL JUDGMENT

1. Heard Ms.Kruti J.Vora, learned advocate for the petitioner and Mr.Kartik I.Soni, learned advocate for the respondent.

2. The petitioner is the original defendant in the suit, and the plaintiff respondent has prayed in the suit that he is enjoying the property in question referred to in the suit and he apprehends forcible dispossession by the defendant Savitaben, widow of Bharpursingh. It emerges from the arguments placed before the Court that initially the learned Civil Judge had granted ad-interim in favour of the plaintiff and the same was made absolute. However the decision of the learned Civil Judge was assailed by way of Appeal from Order with the District Court.

3. It is not a matter of dispute that appeal preferred by the present petitioner Savitaben was allowed in the application Exh.5 preferred by the plaintiff prayed ad-interim injunction was rejected by the appellate court.

4. It is rightly submitted by Ms.Vora, learned advocate appearing for the petitioner that, it can reasonably be inferred that the possession of the property in question of present petitioner Savitaben was peaceful and the apprehension expressed by the plaintiff in the application Exh.5 preferred by him in the lower court has not been accepted as true by the appellate court. It is contended by the petitioner that her husband was the

tenant and was paying rent of Rs.100/- per month regularly to the respondent landlord, and once he had tried to enter into the disputed property i.e. residential house by breaking upon the lock, ration card, electricity bill and a rojnama prepared by the Court Commissioner are the evidence which prima facie indicates that there is no element suggesting trespass by the present petitioner.

5. During the course of hearing, one order passed by this Court dealing with the revision application preferred by the present respondent has been read over to the Court, and it is submitted that the findings of the appellate court in the appeal from order referred to hereinabove has been confirmed. So the amendment as prayed ought not to have been allowed by the lower court is the backbone of the argument of Ms.Vora.

6. Even for the sake of argument, the above argument is accepted then also the submissions made by the respondent cannot be ignored by the Court that the case of the plaintiff is that plaintiff is the owner and entitled to peaceful possession of the property and he has been dispossessed pending of the suit, and when the hearing of the supplement proceedings were pending before the

Court, status of the respondent landlord is not under dispute and the amendment sought for by the plaintiff in the suit is of innocuous nature, plaintiff is compelled to make this amendment because of the conduct of the defendant and nature of the suit would not change at all. This would be a consequential relief or can be said to be an alternative relief.

7. The lower court after ascertaining the rival contentions in the suit as well as in the written statement has allowed the amendment, the order is found legal and valid. The case placed by the defendant in the written statement is held to be acceptable then plaintiff may loose the suit and the court may not grant any relief including the amendment relief because now the say of the plaintiff-respondent is specific that the petitioner is a trespasser, and if the plaintiff fails to prove that by cogent convincing evidence, his suit will fail. But assuming anything, the amendment could not have been rejected, and therefore I do not find any error in the order passed by the lower court and, therefore, the present petition requires to be dismissed. Hence, the same is dismissed. The trial court now shall proceed with the suit on merits, as expeditiously as possible, because the suit is of the year 1995 and the lower court should

see that same is decided within one year from the receipt of the writ of this Court.

8. It is clarified that the observations made by this Court are tentative and shall not prejudice to the contentions of the parties that they are before the lower court. Rule is discharged with no order as to costs.

(C.K. BUCH, J.)

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